IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

: O R D E R :

1. Udaipur Cement Works vs. Union of India & another.
(S.B. Civil Writ Petition No.4457/1992)

2. Udaipur Cement Works vs. Union of India & another.
(S.B. Civil Writ Petition No.4458/1992)

3. Udaipur Cement Works vs. Union of India & another.
(S.B. Civil Writ Petition No.4459/1992)

DATE OF ORDER ::: FEBRUARY 23, 2005

P R E S E N T

HON'BLE MR. JUSTICE PRAKASH TATIA

Mr. Sanjay Mathur, for the petitioner.

None present for the respondents.

REPORTABLE

BY THE COURT :

Heard learned counsel for the petitioner.

These three writ petitions are against the common order of Railway Claims Tribunal, Jaipur (for short "the Tribunal") dated 3.4.1992 by which the Tribunal rejected three claim petitions filed by the petitioner on the ground that the Tribunal has no jurisdiction to entertain the claim in relation to any charge levied and recovered by the Railway under heading of "siding

charges" as according to the Tribunal, the siding charges are not part and parcel of freight and hence, it has no jurisdiction to adjudicate the same.

Brief facts of the case are that the petitioner is a company registered under the Companies Act, 1956. It has its division at Udaipur. The petitioner company booked certain articles in the form of boxes to be carried by the respondent Railways. The petitioner paid freight at the booking station and for that, the Railway issued receipts to the petitioner. According to the petitioner, at the time of booking, the respondents erroneously charged siding charges higher on the ground that they will be using three engines, therefore, the siding charges will be thrice to the normal rate. According to the petitioner, the South Eastern Railways vide communication dated 3.1.1989 confirmed that the revised rates are to be charged irrespective of number of engines used. According to the petitioner, at the booking station, more charges were levied because of one defective circular issued by the Chief Commercial Superintendent (Rate), South Eastern Railway.

In these circumstances, the petitioner company submitted three claim petitions before the Tribunal and prayed that the excess amount recovered from the petitoner be refunded back to the petitioner and interest may also be awarded to the petitioner.

The Tribunal proceeded to decide first whether it has any jurisdiction to adjudicate upon the claim of the petitioner which is the claim relating to excess siding charges. The Tribunal held that the siding charges cannot be part and parcel of the freight. The Tribunal also considered a judgment decided by the Hon'ble Apex Court in the case of Union of India vs. Indian Sugar Mills Association and another reported in A.I.R. 1968 SC page 22. The Tribunal interpreted the said judgment of the Hon'ble Apex Court to hold that "freight" and "any other charges" are two different components and since the words "any other charges" have not been used in Section 13 of the Railway Claims Tribunal Act, 1987 (for short "the Act of 1987"), therefore, the Tribunal can adjudicate only in respect of the claims for refund of fares or part thereof or for refund of any freight paid in respect of animals or goods entrusted to a railway administration to be carried by railway and since the petitioner's claim is not in relation to either fare or part thereof or about the excess charges in freight, therefore, the claim submitted by the petitioner cannot be entertained by the Tribunal. The Tribunal further held that the company may submit his claim before appropriate court.

According to learned counsel for the petitioner,

the Tribunal committed serious error of law in interpreting the sub-clause (b) of Section 13 of the Act of 1987. It is also submitted that the Tribunal misinterpreted the judgment of the Apex Court delivered in the case of Indian Sugar Mills (supra).

I have considered the submissions of the learned counsel for the petitioner.

The Act of 1987 has been enacted for the purpose as mentioned in the Act itself which is worthwhile to quote here :-

> "An Act to provide for the establishment of a Railway Claims Tribunal for inquiring into and determining claims against a railway administration for loss, destruction, damage, deterioration of non-delivery of animals or goods entrusted to it to be carried by railway or for the refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents and for matters connected therewith or incidental thereto."

A bare reading of the purpose for which the Act has been enacted makes it clear that the Tribunal has been established to determine the claims against the

railway administration for any claim of loss, destruction, damage, deterioration of non-delivery of animals or goods entrusted to the railway administration for the purpose of carrying and for the purpose of determining the claims in relation to refund of fares or freight or for compensation for death or injury to passengers occurring as a result of railway accidents and for matters connected therewith or incidental thereto."

In view of the above aim and object, the intention of legislature was very clear so far as giving jurisdiction to the Tribunal is concerned. The intention was that all matters connected or incidental to claims referred should also be decided by the Tribunal and for that purpose words "for matters connected therewith or incidental thereto" have been used.

Keeping in mind the above object, if sub-section (1) of Section 13 of the Act of 1987 is read, then it will make more clear that the Tribunal has been established and has been given a jurisdiction, power and authority which were exerciseable by the civil court and by Claims Commissioner before the enactment of the Act of 1987.

Sub-clause (a) of Section 13(1) provides that the

Claims Tribunal shall have jurisdiction in matters relating to responsibilities of railway administration as Careers under Chapter-VII of the Railways Act, 1989 (for short "the Act of 1989") in respect of the claims for compensation as enumerated in sub-clauses (i) and (ii) of clause (a) of sub-section (1) of Section 13. Sub-clause (b) of Section 13(1) gives jurisdiction to the Tribunal to decide the claims in respect of refund of fares or part thereof or for refund of any freight paid by the consumer to the Railways for carrying the goods or animals. The language in sub-clause (b) has been used in a manner so as to indicate its wide scope. The word "any" has been used before the words "freight paid". After the fares, the words have been used to include "part of fares". Both "part of fares" and "any" used before "freight" indicate that the intention of the legislature was not to leave anything outside the jurisdiction of the Tribunal so as to result into multiplicity of the proceedings and also different litigations for one subject matter against the railway administration.

The freight has not been defined in the Act of 1987 but has been defined in the Act of 1989 which is as under :-

"Freight means the charge levied for the carriage of goods including transhipment charges, if any."

Therefore, whatever charges are levied for

carrying goods by the Railways is a freight and any charge on account of transhipment of goods is also included in the freight.

Here in this case, the dispute is whether the 'siding charges' can be integral part and parcel of the freight itself or it is matter connected or incidental to freight within the scope of word "freight" used in Section 13(1)(b) of the Act of 1987.

Section 94 of the Act of 1989 provides that the Railway administration shall not be responsible for any loss, destruction, damage or deterioration of such goods from whatever cause arising, until the wagon containing the goods has been placed at the specified point of interchange of wagons between the siding and the railway administration and a railway servant authorised in this behalf has been informed in writing accordingly by the owner of the siding.

The siding charges are being fixed by the railway administration, is not in dispute.

The Hon'ble Apex Court in the case of Indian Sugar Mills (supra) considered the expression "freight" and "any other charges". The Hon'ble Apex Court held as under :-

> "It is correct that the Railway was not bound to agree to carry the goods of the Company to the assisted siding or to the factory of the Company; but it seems to us that, once the

> Railway did, in fact, agree and decide to charge the Company for it, the Railway became bound to make the charge in accordance with Section 29(2) of the Act. If a rate of charge is prescribed by the Central Government under Section 29(2) for such voluntary service and the person receiving the service feels aggrieved, he can complain to the Tribunal under Section 41(1)(c) of the Act and have the reasonable rate determined. Even if no rate is prescribed by the Central Government under Section 29(2) and the Railway levies such a charge, it will be competent for the person aggrieved to file the complaint against the rate of charge before the Tribunal under Section 41(1)(c)."

Therefore, it is clear from the judgment of Indian Sugar Mills (supra) itself that the railway administration has two options either to refuse or to enter into agreement for taking the wagons to assisted sidings or to the factory of the company and once the Railway Administration agreed to provide the facility of carrying goods to the company or from the company, then the Railway administration is bound to charge in accordance with the provisions of the Act of 1989. Therefore, the siding charge is also a charge which can be levied by the Railway Administration under the

Act of 1989 and when, it is claimed that such siding charges have been wrongly charged by the railway administration from the consumer, then certainly, it is a dispute in relation to the charges levied for carriage of goods and for transhipment of goods which falls within the definition of freight itself. The freight is not the exact cost of railway administration for carrying the goods from one station to another station but it is a complete charge which is necessary for carrying goods by the railway administration under the agreement of picking up goods and delivery of goods.

In view of the above, the reasons given by the Tribunal giving a narrow interpretation to word "freight" cannot be sustained. Apart from it, there appears to be no reason for giving such a narrow interpretation to the word "freight" or about jurisdiction of Tribunal so as to result into splitting of the claims of the consumers claimed on the ground of wrong charges for carrying the goods resulting into multiplicity of the proceedings and also resulting into nullifying the aim and object of establishing the Tribunal.

The object for which the Act of 1987 has been enacted without any ambiguity indicates that it has been enacted so that all the claims may be enquired

into and determined by the Tribunal which are in relation to the claim of refund of fare or freight or the matters connected therewith or incidental thereto.

In view of the above discussion, all these writ petitions are allowed, the order of the Tribunal dated 3.4.1992 in all these writ petitions is set aside and the matter is remanded to the Railway Claims Tribunal, Jaipur Bench, Jaipur for deciding the claim of the petitioner in accordance with law on merits.

(PRAKASH TATIA), J.

S.Phophaliya

(S.B. Civil Writ Petition No.4458/1992)

Udaipur Cement Works vs. Union of India & another.

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None present for the respondents.

In the result, this writ petition is allowed. See Separate order in S.B. Civil Writ Petition No.4457/1992 (Udaipur Cement Works vs. Union of India & another) decided today itself i.e. On 23.2.2005.

By Order,

COURT MASTER

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